United States Department of Labor Employees' Compensation Appeals Board

L.B., Appellant	_))
and) Docket No. 21-0241
U.S. POSTAL SERVICE, POST OFFICE, Townsend, CA, Employer) Issued: October 28, 2021)))
Appearances: Alan J. Shapiro, Esq., for the appellant ¹ Office of Solicitor, for the Director	Case Submitted on the Record

ORDER REMANDING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

On December 10, 2020 appellant, through counsel, filed a timely appeal from an October 29, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).² The Clerk of the Appellate Boards docketed the appeal as 21-0241.

On February 2, 2016 appellant, then a 53-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on February 1, 2016 he experienced a pinch, followed by extreme pain, in his right leg after he stepped out of his long life vehicle while in the performance of duty. He stopped work on that date. OWCP assigned the claim xxxxxxx928 and, on March 23, 2016,

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² The Board notes that, following the October 29, 2020 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id*.

accepted it for right hip psoas tendinitis and right hip trochanteric bursitis. It paid appellant wageloss compensation on the supplemental rolls, commencing March 18, 2016, and on the periodic rolls, beginning October 29, 2016.

By decision dated August 30, 2017, OWCP terminated appellant's wage-loss compensation, effective August 29, 2017. On September 6, 2017 appellant, through counsel, requested a telephone hearing before a representative of OWCP's Branch of Hearings and Review and submitted additional medical evidence.

By decision dated April 13, 2018, OWCP's hearing representative found that OWCP had not met its burden of proof to terminate appellant's wage-loss compensation.

By decision dated May 6, 2020, OWCP terminated appellant's medical benefits and wage-loss compensation effective that date. On May 14, 2020 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. By decision dated October 29, 2020, OWCP's hearing representative found that appellant had no continuing employment-related disability or medical residuals after May 6, 2020.

The Board finds that this case is not in posture for decision.

OWCP's procedures provide that cases should be administratively combined when correct adjudication of the issues depends on frequent cross-referencing between case files.³ For example, if a new injury case is reported for an employee who previously filed an injury claim for a similar condition or the same part of the body, doubling is required.⁴

As OWCP File Nos. xxxxxx928 and xxxxxx831 both involve injuries to appellant's back for a full and fair adjudication, the Board will remand the case to OWCP to administratively combine the present claim with OWCP File No. xxxxxxx831.5 This will allow OWCP to consider all relevant claim files and accompanying evidence in developing his current compensation claim. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

³ R.R., Docket No. 19-0368 (issued November 26, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, File Maintenance & Management, Chapter 2.400.8c (February 2000).

⁴ *Id*.

⁵ T.T., Docket No. 21-0049 (issued May 3, 2021); S.D., Docket No. 19-0590 (issued August 28, 2020).

IT IS HEREBY ORDERED THAT the October 29, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: October 28, 2021

Washington, DC

Alec J. Koromilas, Chief Judge Employees' Compensation Appeals Board

Janice B. Askin, Judge Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge Employees' Compensation Appeals Board